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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUN 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's
Rules Concerning Maritime
Communications

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PR Docket No. 92-257
RM-7956
RM-8031

**COMMENTS OF
AMERICAN COMMERCIAL BARGE LINES COMPANY
and
WATERWAY COMMUNICATIONS SYSTEM, INC.**

June 1, 1993

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SUMMARY

Responsive to the Notice of Inquiry, American Commercial Barge Line Company and Waterway Communications System, Inc., urge the Commission to forego considerations of "private carriage," exclusivity, and intra-service sharing in the maritime radio services. Land mobile practices and experiences are not directly attributable to the maritime radio services. The proposal for expansion of permissible communications by maritime common carriers is long overdue and should be promptly implemented. The 216-217 MHz channels, orphaned by the re-allocation of 218-219 MHz to IVDS, can be gainfully employed in point-to-point operations. In addition to the issues raised by the Commission, ACBL and WATERCOM urge the Commission to relax operator licensing requirements for maritime coast stations, remove the step-down power limits for AMTS vessel stations, and recognize a "renewal expectancy" for maritime common carrier licensees comparable to the renewal expectancy accorded to land mobile and cellular licensees.

With regard to the proposed rulemaking, ACBL and WATERCOM urge the Commission to recognize maritime common carriers as non-dominant for common carrier regulatory purposes. The proposal for land mobile sharing of maritime frequencies should be withdrawn or severely curtailed due to the likelihood of interference to maritime common carrier

and/or safety operations by virtue of the proposed extremely
close spacing of land mobile stations in proximity to

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AND
WATERWAY COMMUNICATIONS SYSTEM, INC.**

American Commercial Barge Line Company ("ACBL") and Waterway Communications System, Inc. ("WATERCOM"), respectfully herewith submit their comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry entailing a review of the regulations and policies governing maritime communications.^{1/}

I. STATEMENT OF INTEREST

WATERCOM is the licensee of the Automated Maritime Telecommunications System which operates on the Mississippi, Illinois and Ohio Rivers and the Gulf Intracoastal Waterway. The WATERCOM AMTS provides direct dial radiotelephone service, including facsimile and data communications capabilities, to the maritime user community operating along the inland maritime transportation network comprised of the

^{1/} 7 FCC Rcd. 7863, (1992). By order released January 15, 1993, the Commission extended the due date for comments in this proceeding until June 1, 1993, 8 FCC Rcd. 416 (1993).

Mississippi River and its connecting waterways. WATERCOM also operates VHF and MF/HF public coast station facilities in the vicinity of Louisville, Kentucky.

American Commercial Barge Line Company is one of the major waterborne transportation companies operating along the inland waterways. As such, ACBL is a major operator of tow boats and barges, and it necessarily relies upon maritime communications facilities to operate in a safe and efficient manner. ACBL operates numerous private coast stations along the Mississippi River transportation corridor.

WATERCOM and ACBL are pleased to submit their comments to the Commission in response to the Commission's evaluation of the policies and regulations governing maritime communications. The comments set forth below address only those issues of particular importance to ACBL and/or WATERCOM.

II. COMMENTS

A. Inquiry.

(i) Private carriers:

The Commission inquires, at paragraph 21 of the Notice, whether to authorize private carriage in the maritime services, similar to the authority issued to Specialized Mobile Radio ("SMR") operators under Part 90 of the Commission's Rules. ACBL is opposed to such a concept.

The essence of "private carriage" entails a for-hire communications service which is distinguished from common carriage by virtue that the private carrier must discriminate in selecting clientele whereas the public coast station must be open to all traffic. National Ass'n of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir. 1976).^{2/} The concept of such discrimination, however, is anathema to the maritime service. Maritime is a safety service, and open access is an inherent requirement. The international Radio Regulations provide that coast stations -- not simply public coast stations but rather all coast stations, whose service is not continuous, shall not close for the day before exchanging all traffic originating or destined for ships within their service area. Rad. Reg. 4048-4050. Were the Commission to authorize private carriers in the maritime service, it is quite likely that a situation could arise wherein the private carrier is the only remaining authorized carrier in an area and an emergency call could go unanswered because that private

^{2/} 47 U.S.C. 332(c)(1) does not overcome this standard in that said provision is limited to the private land mobile radio services. The Commission made clear in ET Docket 93-40, concerning an amateur allocation at 219-220 MHz, that Section 332 of the Act applies only to land mobile services and cannot be extended to other classes of radio service. Allocation of the 219-220 MHz Band for Use by the Amateur Radio Service, 8 FCC Rcd. 2352 (1993) (hereafter "219-220 MHz Band"), at n.19.

carrier refuses to recognize a call from a ship which is not presubscribed to its service.

Operations in the maritime and land mobile radio services are not analogous; and thus, there is no basis to conclude that authorizing private carriers would "increase

WATERCOM system), the predominant flow of traffic in the maritime service is in the ship-to-shore direction. Second, the Commission established SMR operations on then "virgin" spectrum; and such spectrum simply does not exist in the maritime mobile service. Indeed, allowing third-party providers to share frequencies with maritime operators will exacerbate channel congestion by virtue that the comity which exists between and among maritime operators may not be observed by a party whose mission is to provide communications service in that such a party would not be sensitive from an operational standpoint to co-existing with other maritime parties.

Subsequent to the establishment of the SMR services, the Commission has rejected the concept of private carrier operations on two-way channels in the Special Emergency Radio Service^{4/} and in the land mobile services generally.^{5/} There is no reason to revive the concept for the maritime service, or to believe it could prove beneficial for the maritime service when the Commission has rejected the concept for the land mobile services.

^{4/} Special Emergency Radio Service, 5 FCC Rcd. 3471 (1990).

^{5/} Shared Use Criteria for Private Land Mobile Frequencies, 6 FCC Rcd. 542 (1991).

(ii) Exclusivity:

The Commission questions whether and how to introduce exclusivity into the private coast station assignment process in order to provide incentive for spectrum efficiency. Again, the limited number of available VHF maritime channels and the large number of maritime users appear to preclude introduction of exclusivity in the VHF maritime band, except with regard to public correspondence stations. In general, the fleets of even the largest maritime operators, such as ACBL, are dispersed over several thousand miles of waterways. Accordingly, while exclusivity may be an appropriate consideration in the private land mobile services, where large fleets of vehicles are operated within a confined geographic region, a similar environment is not present in the maritime service.

(iii) Permissible Communications:

ACBL and WATERCOM support allowing maritime carriers to serve land mobile users. Indeed, under both the international Radio Regulations and the Commission's Rules and Regulations public coast stations may service the public correspondence needs of aircraft. There is no reason why they should not also be able to serve the communications requirements of land mobile operators. When the Commission recognized and enforced a "curtain" between the maritime and land mobile services, and barred land mobile carriers from

serving vessels, there was a rationale for maintaining separation of the services. With the restriction against land mobile "IMTS" carriers serving maritime users having been lifted, and with cellular carriers freely serving vessel operators, there is no reason to restrict maritime carriers from the reciprocal opportunity to provide service to land mobile vehicles to the extent they have capacity. Indeed, since issuance of the PR Docket 86-2 Report and Order in 1986, the Commission regularly has granted waivers to public coast station operators to allow service to land mobile users. This provision should be regularized expeditiously for both public coast and AMTS carriers.

regard to use of the radio channels. Eliminating the current use limitations could jeopardize critical communications. Thus, elimination of the use restrictions would not increase capacity or efficiency; it could only serve to introduce new, extraneous channel use shifted from

reception. The most disciplined use of these channels, and that which is least likely to pose the potential for interference to television broadcast reception, would be in point-to-point service. Any such point-to-point use should be on a secondary basis to adjacent operations, both AMTS and television broadcasting.

(vi) Other Issues:

In addition to the changes proposed by the Commission in the Inquiry portion of the Notice, ACBL and WATERCOM urge the Commission to consider and implement the three changes discussed below.

(a) ACBL and WATERCOM urge the Commission to utilize the opportunity provided by this review of the Commission's Rules to re-examine and relax operator licensing requirements in the maritime mobile service, 47 C.F.R. § 80.153. Licensed radio operators for coast stations are not required under the international Radio Regulations, see Rad.Reg. 3979 (1990 Ed.); and the Commission has rescinded its rules that permitted only licensed commercial radio operators to perform transmitter maintenance, adjustments and servicing in the public mobile, private land mobile, private operational-fixed microwave and personal radio services. See Public Mobile Radio Service, 95 F.C.C.2d 769 (1983); Radio Operator Requirements, 96 F.C.C.2d 1123 (1984). There simply is no rationale for maintaining a

higher level of operator licensing requirement in maritime than for other fixed and mobile services.

(b) Second, WATERCOM respectfully urges the Commission to re-examine the limitation on AMTS ship station power of less than 50 watts, as set forth in § 80.215(i) and (j) of the Commission's Rules. That rule limits ship station transmitter power to 25 watts, except that power may be increased up to 50 watts pursuant to coast station control. WATERCOM has engaged in experimentation with full (50 watt) coast station transmit power since institution of commercial service; and during more than 6 years of operation that experimentation has produced (i) no complaints of harmful interference from television broadcast channel 13 station licensees or viewers, and (ii) more reliable communication between vessel and coast stations. The lower power limitation was one of the highly conservative engineering restrictions imposed upon AMTS operations to protect against interference to television broadcast service. Given the "no harmful interference" limitation of § 80.215(h), the power limit on vessel stations is unnecessary; and WATERCOM's operations over the past 6-plus years have demonstrated that the variance in ship station power is indistinguishable to

AMTS) licensees vis-à-vis challengers to license renewal who file competing applications. Renewal expectancy has been recognized in the Public Land Mobile Service, Baker Protective Services, Inc., 59 RR 2d 1141 (1986), and for cellular service, Domestic Public Cellular Radio Telecommunications Service, 7 FCC Rcd. 719 (1992), modified on recon., 58 Fed. Red. 21928 (Apr. 26, 1993). The same policy reasons apply to maritime common carrier licensees; and the policy so should be extended to the maritime

(ii) Private Land Mobile Use of Maritime Frequencies:

ACBL and WATERCOM continue to object to the proposed private land mobile use of maritime frequencies in the vicinity of navigable waters.

The Commission's proposal to permit land mobile sharing of maritime frequencies is based upon a very superficial risk/reward analysis. The Commission references the CICS statement that "maritime frequencies are unused in many land-locked regions of the United States while I/LT channels suffer congestion."^{7/} The Commission goes on to reference its experience with inter-service sharing in the private land mobile radio services.^{8/} From these premises, the Commission proposes land mobile sharing with maritime public coast station frequencies, subject to a minimum separation of 55 miles between the land mobile base station, navigable waterways and co-channel public coast stations, and for the land mobile stations to operate on a co-primary basis. The Commission also requests comments on allowing sharing of port operations channels and on whether sharing also should be permitted by land mobile services other than those in the industrial and land transportation categories.^{9/}

^{7/} Notice at ¶ 37.

^{8/} Notice at ¶ 39.

^{9/} Notice at ¶¶ 40-41 and n.69.

ACBL and WATERCOM do not object to the premise that channels allocated to the maritime radio service may be used by other users in land-locked areas where there are no maritime operations and where land mobile use will not pose the potential for interference to maritime operations. The Commission's proposal, however, goes far beyond such non-interfering sharing. Rather, the proposal seeks to crowd land mobile use into extremely close proximity to maritime use, under conditions of shared use which ignore the nature of the maritime service, under inappropriate technical parameters and for very little, if any, real benefits.

Maritime is a safety service; and Commission authorization of ancillary use of the maritime spectrum must first and foremost, take the safety aspects into account.^{10/} The safety nature of the maritime service applies to the public coast functions as well as to the port operations use.^{11/} Moreover, the public coast station frequencies entail a common carrier service. None of the common carrier services licensed under Parts 21 or 22 of the Commission's Rules are subjected to frequency sharing, and particularly to frequency sharing with minimal geographic separation to

^{10/} See Request for Waiver of the Requirements in Section 80.453 of the Rules to Permit Public Coast Station WHU638 to Serve Mobile Units on Land, at ¶3 (DA 93-496, May 4, 1993).

^{11/} Id.

the extent that the common carrier service is subjected threatened by very real potential of harmful interference. Indeed, for adjacent band -- not co-channel -- operations of dissimilar services, the Commission considers a normal separation to be 105 miles. See, 47 C.F.R. §80.215(h)(1). The Commission's attempt to use land mobile separations standards for inter-service sharing simply is inappropriate inasmuch as the land mobile service entails shared co-channel operations, conditions which do not apply to maritime public coast station frequencies.

Second, the benefits of the proposed land mobile sharing are, with several exceptions, largely illusory. Congestion in the land mobile services exists in major metropolitan areas. All of the Commission's studies so evidence. In the top twenty (20) metropolitan areas,^{12/} only one area within the top 10 (Dallas-Fort Worth), and two within the next 10 (Atlanta and Denver), are located beyond 55 miles of coastal areas or navigable waterways.^{13/} In small metropolitan areas and in rural areas, frequency congestion simply is not a problem. Thus, the real, usable benefit from implementation of land mobile sharing of maritime frequencies in areas where additional channel

^{12/} See 47 C.F.R. §90.741.

^{13/} In some of these three areas, there are navigable lakes within the immediate vicinities.

capacity may be needed is minimal, at best. If the objective of this rulemaking is to secure additional land mobile spectrum for Dallas-Fort Worth, Atlanta, and Denver, the Commission should so specifically provide in the same fashion the Commission provides for frequency sharing by the land mobile services with the television broadcast service -- on a specific geographic basis, See, 47 C.F.R. §90.301 - 317, not in a broad-brush fashion that threatens maritime safety and common carrier operations.

As to the minimal needs that sharing could satisfy, this proposal should be withdrawn as it has been rendered moot by the Commission's proposal for "refarming" of the land mobile radio spectrum, PR Docket No. 92-235, 7 FCC Rcd. 8105 (1992). The Commission contemplates a 300-500% increase in spectrum capacity by adoption of the measures proposed in that rulemaking.^{14/} Given the enhancement of utilization of the spectrum allocated to the Industrial, Land Transportation and other land mobile services, entailing both near-term and long-term improvement in spectrum utilization, there is absolutely no reason why land mobile use need crowd and threaten interference to maritime common carrier and safety operations. The Commission's PR Docket No. 92-235 rulemaking completely overtakes and

^{14/} See Public Notice, Mar. 1, 1993, No. 31969, at question 5.

subsumes the CICS proposal; and unless the Commission determines that still additional spectrum is needed to meet land mobile needs that will not be satisfied through spectrum rearming, the Commission should terminate this proceeding without further action.

Third, the technical parameters proposed for land mobile operation are wholly inappropriate. Whereas maritime operates with the coast station transmitting high and the ship station transmitting low, the Commission proposes that

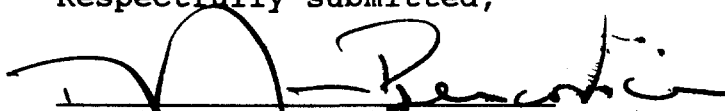
there is no geographic separation imposed upon the vehicular mobile units. Thus, a vehicular mobile unit may be operating from a hilltop at a substantial distance from its associated base station; and it likely will produce a stronger signal than the correspondent coast station. Just as the Commission rejected the CICS proposal for offset operation, so it must reject any frequency alignment that does not mirror the alignment of Part 80 of the Commission's Rules.

Finally, the proposal to confer co-primary status upon the land mobile services operating in the maritime band is wholly inappropriate from a spectrum management standpoint. As hereinbefore discussed, maritime is a safety service, and the public coast station frequencies entail common carrier service. If AMTS operations must protect adjacent band (not co-channel) operations, 47 C.F.R. §80.215(h)(4), a fortiori land mobile operations sharing the maritime band must operate on a secondary basis so to protect the safety and common carrier maritime communications operations. Accord, 219-220 MHz Band, supra.^{15/}

^{15/} In 219-220 MHz Band, in proposing sharing of AMTS spectrum by the amateur service, the Commission has proposed not only a minimum 50-mile separation and secondary status but also direct notification to the maritime licensees before amateurs within 150 miles of AMTS stations may begin to operate. If such protection is afforded for sharing by stations which operate in a point-to-point mode, at the very
(continued...)

WHEREFORE, THE PREMISES CONSIDERED, American Commercial Barge Line Company and Waterway Communications System, Inc., respectfully urge the Federal Communications Commission to (i) proceed with rulemaking in accordance with the foregoing comments in response to the Inquiry portion of the instant notice; (ii) recognize maritime as a non-dominant common carrier service, and (iii) terminate, without action, the proceeding insofar as it proposes to allow land mobile use of maritime channels, or, at a minimum, to establish meaningful mileage separations as submitted in comments in response to the CICS Petition for Rulemaking, align the land mobile frequencies with the maritime base/mobile usage, and condition land mobile usage to secondary status.

Respectfully submitted,



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15/(...continued)
least such protection should be afforded where the sharing party operates in a mobile mode.